

U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



BRB No. 18-0253

| | | |
|-------------------------|---|-------------------------|
| TRAMOND M. BOURGEOIS |) | |
| |) | |
| Claimant-Petitioner |) | |
| |) | |
| v. |) | |
| |) | |
| FAB-CON, INCORPORATED |) | |
| |) | DATE ISSUED: 03/21/2019 |
| and |) | |
| |) | |
| SIGNAL MUTUAL INDEMNITY |) | |
| ASSOCIATION, LIMITED |) | |
| |) | |
| Employer/Carrier- |) | ORDER on MOTION for |
| Respondents |) | RECONSIDERATION |

Claimant has filed a timely motion for reconsideration of the Board's decision in *Bourgeois v. Fab-Con, Inc.*, BRB No. 18-0253 (Nov. 15, 2018). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. Claimant challenges the Board's affirmance of the administrative law judge's denial of benefits. Employer responds, urging the Board to deny claimant's motion. Because claimant has not established error in the Board's decision, we deny his motion for reconsideration.

Claimant challenges only the Board's affirmance of the administrative law judge's denial of payment for the cost of the 2017 shoulder surgery. In a theory not previously raised, claimant asserts the purpose of the surgery was, in part, to examine and relieve the AC joint. He reasons that the AC joint condition was found to be work-related, making the surgery work-related. We decline to address claimant's theory of recovery because he is raising it for the first time in a motion for reconsideration. *See, e.g., Johnston v. Hayward Baker*, 48 BRBS 59 (2014); *Ravalli v. Pasha Maritime Services*, 36 BRBS 91 (2002), *denying recon.* in 36 BRBS 47 (2002). Further, as set forth in our decision, *Bourgeois*, slip op. at 5 n.6, claimant did not challenge the administrative law judge's finding that the AC

joint sprain resolved as of November 4, 2014. He cannot now assert that the 2017 surgery was to repair this fully-resolved condition.¹

Accordingly, claimant's motion for reconsideration is denied. 20 C.F.R. §802.409.

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

¹ Should claimant believe there was a mistake in fact in the administrative law judge's decision or a change in his condition, he may file a motion for modification with the district director. 33 U.S.C. §922; 20 C.F.R. §702.373.